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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,670	03/01/2004	Martin Padget	TRIAGE.020A	7872
20995 7590 10/11/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER PRIDDY, MICHAEL B	
			ART UNIT 3733	PAPER NUMBER
			NOTIFICATION DATE 10/11/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/790,670

Applicant(s)

PADGET ET AL.

Examiner

Michael B. Priddy

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-10 and 27-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-9 and 31-33 is/are allowed.
- 6) ☒ Claim(s) 3 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 27-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 27 recites the limitation "the step of moving the ends of a pair of lever arms towards each other" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. Due to this lack of antecedent basis, it is unclear to the Examiner from which claim 4-10 claims 27-30 should depend.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Art Unit: 3733

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Enayati (U.S. 6,290,701). Enayati teaches a method of fixing a first piece of bone to a second piece of bone, comprising the steps of: providing a pin 170 having at least one laterally moveable distal anchor 171 and a lumen 174 extending therethrough; advancing the distal anchor 171 through the first piece of bone and into the second piece of bone while the distal anchor 171 is permitted to move laterally inwardly as needed (lines 11-14 of column 8), gripping with a deployment tool 210 a proximal portion of a wire 40/100/150 that extends axially through the lumen 174 (lines 38-40 of column 8); and moving with the deployment tool 210 the wire 40/100/150 axially through the lumen 174 such that a distal portion of the wire 40/100/150 resists radial inward deflection of the distal anchor 171, thereby locking the distal anchor 171 with respect to lateral inward movement (lines 45-49 of column 8); wherein the step of moving with the deployment tool 210 the wire 40/100/150 axially through the lumen 174 comprises moving an outer body 213 of the deployment tool 210 with respect to a central body 240 of the deployment tool 210 (lines 42-54 of column 8).

Concerning the step "wherein the step of moving the outer body 213 of the deployment tool 210 with respect to the central body 240 of the deployment tool 210 comprises one way ratchet-type motion," the Examiner points out a one way motion is all that is apparently required by this limitation, not a ratchet mechanism per se. It is the Examiner's understanding that the structure of the internal lumen of the pin 170 and the

Art Unit: 3733

cooperating structure (155) of the exterior surface of "wire" 150, for example, would allow for movement of the "wire" 150 into "pin" 170 but not in the opposite direction.

Allowable Subject Matter

Claims 4-10 and 31-33 are allowed.

Claims 27-30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph.

Response to Arguments

Applicant's arguments filed 07/06/2007 have been fully considered but they are not persuasive. Applicant has argued Enayati "indicates that the compression rivet 170 is not designed or intended to be used with the expansion pin 150 at all, much less to provide any type of one-way movement." The Examiner respectfully disagrees. In lines 58-67 of column 7 and lines 1-8 of column 8, Enayati teaches "The bone insertion portion 177 of the rivet may be configured in accordance with any of the embodiments of a rivet bone fasteners 10, 70, 120, discussed earlier, using their respective expansion pins 40, 100 and 150 to expand the legs thereof." Thus indicating the rivet 170 is usable with the expansion pins 40, 100 and 150.

Regarding applicant's arguments with respect to the one-way ratchet-type movement of the outer body of the deployment tool with respect to the central body of the deployment tool, the Examiner maintains that by attachment to the pin 170 and wire

Art Unit: 3733

150, the deployment tool would be constrained by the relative movement of the pin 170 and wire 150 to their one way movement during installation.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is 571-272-2243. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael B. Priddy

Michael B. Priddy
September 28, 2007


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER